IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4434 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IQABAL MUSABHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR VM PANCHOLI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/02/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner herein has been, under order dated 16th June, 1999, ordered to be detained by the Commissioner of Police, Ahmedabad City, in exercise of powers conferred upon him by section 3 (1) of the Gujarat

Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as `the Act'). Therefore, the petition.

It is alleged that the petitioner is a 'bootlegger' within the meaning of Section 2 (b) of the Act. Three prohibition cases have been registered against him in the months of May and June 1999. In all the said three cases, sizable amount of country liquor was recovered from him. Besides, two persons, whose identity has been withheld under the powers conferred by section 9 (2) of the Act, have given statements about the incidents that occurred on 18th May, 1999 and 22nd May, 1999. In both the incidents, the respective witnesses have stated that on account of the petitioner's anti-social activities, the peace and tranquility in the area was disturbed resulting into breach of public order. Hence, the petitioner's activities are held to be detrimental to the maintenance of the `public order'.

The only contention raised before me is that under his representation dated 22nd June, 1999, the petitioner had demanded copies of the statements of the witnesses recorded under section 161 of the CRPC, and also the reports of the Chemical Analyser in respect of the material seized from the petitioner. It is contended that but for those documents, the petitioner could not make an effective representation against the order of detention. The said documents were vital and ought to have been furnished to the petitioner. This Bench in the matter of AMBALAL CHHAGANLAL RAVAL VS COMMISSIONER OF POLICE & ORS. (SPECIAL CIVIL APPLICATION NO. 10687/98, DECIDED ON 9TH AUGUST, 1999) has taken a view that the reports of the Chemical Analyser are vital documents, and if available, ought to be furnished to the detenu irrespective of the fact whether the Detaining Authority has taken such reports into consideration or not. The Division Bench of this Court comprising of Hon'ble M/s. Justices B.S.Kapadia & N.J.Pandya, in the matter of KALUBHAI @ KALU JINNAT ABUBHAT KHATKI VS THE POLICE COMMISSIONER AHMEDABAD CITY (SPECIAL CIVIL APPLICATION NO. 2080/93, DECIDED ON 22ND AUGUST, 1994), has taken a view that the statements of witnesses recorded in the criminal cases are also vital documents which might be subsidiary facts necessary for making effective representation. If such documents are demanded, the same should be made available to the detenu.

The contention raised in the petition is not answered. It is stated in the affidavit that all the documents which were available to the Detaining Authority

and were relied upon by him were furnished to the detenu also. However, that is not sufficient. As observed in the above referred two judgments, even if the documents in question are not relied upon by the Detaining Authority, the same should be furnished to the detenu, if demanded. It is not the case of the Detaining Authority that on the date of the order of detention or on the date of representation such, documents were not available and could not have been supplied.

It must, therefore, be held that the detenu was not furnished the documents which were necessary for him to make an effective representation and thus the detenu has been deprived of his right to make an effective representation. The action of the Detaining Authority in not furnishing such documents is violative of Article 22 (5) of the Constitution of India and the continued detention of the petitioner shall be un-Constitutioinal, null and void.

In view of the above discussion, the petition is allowed. The impugned order dated 16th June, 1999, is quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

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JOSHI